

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

GUILLERMO TRUJILLO CRUZ,

Plaintiff,

v.

M. GONZALEZ, *et al.*,

Defendants.

Case No. 1:22-cv-00177-AWI-CDB (PC)

**ORDER DENYING PLAINTIFF'S
MOTION FOR RECONSIDERATION**

(ECF No. 21)

Plaintiff Guillermo Trujillo Cruz ("Plaintiff") is a state prisoner proceeding *pro se* in this civil rights action pursuant to 42 U.S.C. § 1983.

RELEVANT PROCEDURAL BACKGROUND

On September 9, 2022, this Court issued its Order Dismissing Action, Without Prejudice, for Failure to Pay Filing Fee. (ECF No. 15.) Judgment was entered that same date. (ECF No. 16.)

On September 19, 2022, Plaintiff filed a Notice of Appeal. (ECF No. 17.) Pursuant to docket entry number 19, dated September 20, 2022, the Ninth Circuit Court of Appeals assigned the appeal case number 22-16434. (ECF No. 19.)

On September 30, 2022, Plaintiff filed a document titled "'Response to Notice of Appeal.'" (ECF No. 20.)

On October 14, 2022, Plaintiff filed "'Plaintiff's Motion and Motion for Reconsideration Rule 60(b).'" (ECF No. 21.)

1 Plaintiff's appeal deprives this Court of jurisdiction to consider his motion for
2 reconsideration. Generally, the filing of a notice of appeal divests the district court of jurisdiction
3 with respect to all matters involved in the appeal. *Griggs v. Provident Consumer Discount Co.*,
4 459 U.S. 56, 58 (1982); *Bermudez v. Duenas*, 936 F.2d 1064, 1068 (9th Cir. 1991); *Gould v.*
5 *Mutual Life Insurance Company of New York*, 790 F.2d 769, 772 (9th Cir. 1986); *Scott v.*
6 *Younger*, 739 F.2d 1464, 1466 (9th Cir. 1984); *Davis v. United States*, 667 F.2d 822, 824 (9th Cir.
7 1982).

8 A notice of appeal does not divest the district court of jurisdiction if, at the time it was
9 filed, "there was a pending motion for reconsideration." *United Nat'l Ins. Co. v. R&D Latex*
10 *Corp.*, 242 F.3d 1102, 1109 (9th Cir. 2001) (citing Fed. R. App. P. 4(a)(4)(B)(i)). However, the
11 district court lacks jurisdiction to entertain a motion for reconsideration that is "filed after the
12 notice of appeal has been filed." *Katzir's Floor & Home Design, Inc. v. M-MLS.com*, 394 F.3d
13 1143, 1148 (9th Cir. 2004) (citing *Williams v. Woodford*, 384 F.3d 567, 586 (9th Cir. 2004)
14 (vacating order denying motion for reconsideration for lack of jurisdiction where the motion was
15 filed after the notice of appeal and the movant did not follow the procedure for seeking a remand
16 of the case back to the district court); *Carriger v. Lewis*, 971 F.2d 329, 332 (9th Cir. 1992) (en
17 banc) (same)).

18 Here, because the appeal is pending in the Ninth Circuit, and was filed before the motion
19 for reconsideration, this Court is without jurisdiction to rule on Plaintiff's motion. Additionally,
20 for those same reasons, the Court is without jurisdiction to take any action, even were it inclined
21 to do so, concerning Plaintiff's September 30, 2022 (Doc. No. 20) filing.

22 Accordingly, the motion for reconsideration (Doc. No. 21) is DENIED.

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24 IT IS SO ORDERED.

25 Dated: October 24, 2022


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28 SENIOR DISTRICT JUDGE